

### **REMARKS**

With the foregoing amendment claims 1-34 are pending in the application. Claims 1, 12, 16, 18, 27, and 29 are independent. No new matter has been added by the amendments. Applicant(s) respectfully request(s) reconsideration of the Rejections/Objections, which are discussed below.

#### **Allowable Subject Matter**

Applicants thank the Examiner for indicating that claims 31 and 33 would be allowable if re-written in independent form.

#### **Rejections of Claim 1-30, 32 and 34 under 35 U.S.C. §103**

Claims 1-30, 32 and 34 stand rejected under 35 U.S.C. 103 as being obvious over Leeke (US 6,587,127) in view of Dwek (US 6,248,946). Applicant respectfully disagrees.

#### **Independent Claim 1**

With respect to independent claim 1, claim 1 is not obvious over Leeke in view of Dwek because neither reference, considered alone or in combination, teach or suggest all of the features of claim 1. For example, at the least, neither reference, considered alone or in combination, teach or suggest, “modifying at least one of the one or more audio channel profiles in response to receiving the indication that the user likes the received broadcast sound recording,” as is recited in claim 1.

The Office correctly notes that Leeke does not disclose this feature, but relies on Dwek to make up for the deficient teachings of Leeke. However, applicant respectfully submits that Dwek does not teach or suggest the step of “modifying at least one of the one or more audio channel profiles in response to receiving the indication that the user likes the received broadcast sound recording,” as is recited in claim 1. Accordingly, Dwek does not make up for the deficient teachings of Leeke.

Dwek discloses an Internet music service (i.e., “RADIO SONICNET”) that allows users more freedom to choose the music selections that he or she wants to hear. More

specifically, as described in Dwek, "RADIO SONICNET allows a listener to select and rank musical artists and musical categories of interest to the listener to create a customized radio station." *Col. 2, lines 15-19*. As further described in Dwek, "[t]o create a 'custom' radio station, a listener interacts with musical preference forms supplied to his or her computer's existing Internet web browser over an Internet connection with the RADIO SONICNET web site." *Col. 2, lines 23-27*.

Nowhere does Dwek disclose or suggest modifying a customized radio station based on user feedback, let alone "modifying [an] audio channel profile in response to receiving [an] indication that the user likes [a] received broadcast sound recording." Rather, Dwek merely disclose that a user can create a customized radio station by interacting with (i.e., filling out) a form. Accordingly, applicant respectfully submits that Dwek does not make up for the deficient teachings of Leeke. Hence, the invention of claim 1 is not obvious and the rejection thereof should be withdrawn.

#### Dependent Claim 2

With respect to dependent claim 2, claim 2 is not obvious over Dwek and Leeke because the combination does not teach or suggest all of the features of claim 2. For example, the combination fails to disclose that "said ... profile includes a set of one or more sound recording identifiers," let alone that the step of modifying the profile comprises the step of "adding a sound recording identifier that identifies the received broadcast sound recording to said set of sound recording identifiers included in the ... profile," as is required by claim 2.

The Office contends that Dwek discloses these features. In support of its contention, the Office cites to the following portion of Dwek:

RADIO SONICNET allows a listener to select and rank musical artists and musical categories of interest to the listener to create a customized radio station. RADIO SONICNET then provides the listener with a list of musical artists whose music will be played on the radio station. Individual song selections, play frequency, and song order are all determined by the RADIO

SONICNET music service without any direct listener control. To create a "custom" radio station, a listener interacts with musical preference forms supplied to his or her computer's existing Internet web browser over an Internet connection with the RADIO SONICNET web site. All songs are delivered from the RADIO SONICNET server(s) to the listener's computer over an Internet connection with the listener's web browser, and are played on the listener's computer by one or more plug-ins or helper applications associated with the web browser. RADIO SONICNET earns revenue to support its music service from Internet "banner ads" which are displayed in the listener's browser window on the user's computer display screen while music selections are streamed to his or her computer. However, the user's web browser may be minimized or covered with other open windows on the computer display screen, so that the ads may not be viewed by the user. So, once again, the value of the advertisements to the advertisers is diminished. *Col. 2, lines 15-39.*

The above cited portion of Dwek simply does not disclose that "said ... profile includes a set of one or more sound recording identifiers," let alone that the step of modifying the profile comprises the step of "adding a sound recording identifier that identifies the received broadcast sound recording to said set of sound recording identifiers included in the ... profile," as is required by claim 2.

Rather, the above cited portion of Dwek merely discloses that the user "select[s] and rank[s] musical artists and musical categories of interest." Accordingly, to the extent Dwek discloses a profile, Dwek merely discloses that the profile contains a list of musical artists and/or a list of musical categories. According to Dwek, the RADIO SONICNET system uses this musical artist/categories information to determine the "individual song selections, play frequency, and song order." In other words, RADIO SONICNET uses a profile that identifies artists and categories to create a playlist. Accordingly, the above cited portion of

Dwek does not disclose that "said ... profile includes a set of one or more sound recording identifiers," let alone that the step of modifying the profile comprises the step of "adding a sound recording identifier that identifies the received broadcast sound recording to said set of sound recording identifiers included in the ... profile," as is required by claim 2. Applicant, therefore, respectfully requests that the rejection of claim 2 be withdrawn.

Dependent Claim 3-4

Claims 3-4 depend from claim 1. Thus, claims 3-4 are patentable over Leeke for at least the same reasons given above with respect to claim 1.

Dependent Claim 5

With respect to dependent claim 5, claim 5 is not obvious over Dwek and Leeke because the combination does not teach or suggest all of the features of claim 5. For example, the combination fails to disclose the step of "requesting the user to select at least one of the audio channel profiles in response to receiving the indication," as is required by claim 5.

Dependent Claim 6

Claim 6 depends from claim 1. Thus, claim 6 is patentable for at least the same reasons given above with respect to claim 1.

Dependent Claim 7

With respect to dependent claim 7, claim 7 is not obvious over Dwek and Leeke because the combination does not teach or suggest all of the features of claim 7. For example, the combination fails to disclose the step of "selecting one or more of the audio channel profiles based on the received information concerning the received broadcast sound recording," as is required by claim 7.

The Office contends that Dwek discloses these features. In support of its contention, the Office cites to Dwek, col. 2, lines 15-39, which is reproduced above in connection with the discussion of claim 2.

The portion of Dwek cited by the Office merely discloses that (1) a user creates a profile by selecting artists and musical categories and (2) the “individual song selections, play frequency, and song order are all determined by the RADIO SONICNET music service without any direct listener control.” In other words, Dwek discloses a system that selects songs for a user based on the profile created by that user. Nowhere does Dwek disclose “selecting one or more of the audio channel profiles based on the received information concerning the received broadcast sound recording,” as is required by claim 7. In fact, Dwek does not even disclose receiving information concerning a received broadcast sound recording, let alone the step of selecting an audio channel profile based on the received information.

The Office contends that the RADIO SONICNET server “must inherently select one or more audio channel profiles which match the broadcast sound recording to determine whether to send the said broadcast sound recording.” *Office action*, p. 6. However, nowhere does Dwek disclose or suggest that the RADIO SONICNET music service must necessarily (i.e., inherently) operate in this manner. In fact, it seems clear from the description of the RADIO SONICNET music service that a user uses a web browser to connect to the music service and then the music service (a) selects the user’s profile and (b) selects and transmits to the user’s browser songs that match the profile. *See Dwek - col. 2, lines 27-32* (“All songs are delivered from the RADIO SONICNET server(s) to the listener’s computer over an Internet connection with the listener’s web browser, and are played on the listener’s computer by one or more plug-ins or helper applications associated with the web browser.”).

Thus, based on the teachings of Dwek, the RADIO SONICNET music service has nothing whatsoever to do with broadcast sound recordings. Simply put, there is nothing in Dwek that suggest the RADIO SONICNET service must necessarily (i.e., inherently) select one or more audio channel profiles which match a broadcast sound recording.

Accordingly, there is nothing in Dwek that teaches or suggests the step of “selecting one or more of the audio channel profiles based on the received information concerning the received broadcast sound recording,” as is required by claim 7. Applicant, therefore, respectfully requests that the rejection of claim 7 be withdrawn.

Dependent Claims 8-10

Claims 8-10 depend from claim 1. Thus, claims 8-10 are patentable for at least the same reasons given above with respect to claim 1.

Dependent Claim 11

With respect to dependent claim 11, claim 11 is not obvious over Dwek and Leeke because the combination does not teach or suggest all of the features of claim 11. For example, the combination fails to disclose the step of “copying the sound recording from the cache to a non-volatile storage medium if it is determined that the user may obtain the copy,” as is required by claim 11.

The Office contends that Leeke discloses this feature. In support of its contention, the Office cites to the following portion of Leeke:

A playlist smart card is a custom card for an individual. The playlist smart card is a collection and organization device for content available via the electronic network 100. The playlist smart card can be used to collect music, library content, events, or radio programming using personalized icons, event schedules, and playlists. Access to some content may be secured using the playlist smart card via a purchase. The playlist smart card can be traded, downloaded, sold, and/or bartered between two individuals. *Col. 23, lines 61-66.*

This portion of Leeke does not disclose “copying [a] sound recording from the cache to a non-volatile storage medium if it is determined that the user may obtain the copy,” as is required by claim 11. The above portion of Leeke merely describes a playlist smart card that can store information (e.g., music, schedules, etc.).

The Office contends that “the smart card is capable of storing said broadcast sound recording. As such, the system of Leeke is capable of ‘copying the sound recording from the cache to a non-volatile storage medium if it is determined that the user may obtain the copy.’” *Office action, p. 7 (emphasis added)*. However, the capabilities of the Leek system are irrelevant because claim 11 is a method claim that positively requires the performance of

the step of “copying the sound recording from the cache to a non-volatile storage medium if it is determined that the user may obtain the copy.”

Thus, the fact that the system described in Leeke is theoretically capable of performing the step is irrelevant because a method claim is patentable over the art if the art does not teach or suggest performing all of the method steps. Accordingly, while the Leeke system may certainly be capable of performing this “copying” step, nowhere does the Leeke reference teach or suggest performing this “copying” step. Thus, neither Leeke nor Dwek teach or suggest all of the elements of claim 11. Applicant, therefore, respectfully requests that the rejection of claim 11 be withdrawn.

#### Independent Claim 12

Like claim 1, claim 12 requires the step of “modifying ... [a] profile[] in response to the user indicating that the user likes or does not like the broadcast sound recording,” Accordingly, for the reason give above with respect to claim 1, claim 12 is patentable over Leeke in view of Dwek.

Furthermore, claim 12 also requires “receiving from the user an indication that the user desires to listen to a selected one of the two or more personalized audio channels;” this feature is not disclosed in Leeke or Dwek.

The Office contends, however, that Leeke discloses this step. This contention lacks merit. In support of its contention, the Office cites to the following portions of Leeke:

The customer profile component 150 stores and manages a table of end user data. The end user data includes a record comprising one or more of a name, an address, a login, an electronic mail address, preferences, and demographics for each end user. Examples of end users include listeners and other consumers, broadcasters, and promoters (e.g. record labels). Optionally, the customer profile component 150 purges a record after a predetermined period of inactivity of its associated end user. Col. 6, lines 11-19.

The end user selects either a title from the list or its associated icon to commence a rating process for an associated track. In response to receiving a user-initiated selection of a title or an icon, at least a portion of the associated track is communicated to the client apparatus 106. Although an entire portion of the associated track can be communicated, it is preferred that a limited-duration sample of the associated track be communicated. For example, the limited-duration sample can be comprised of a 30-second clip of the associated track. *Col. 35, lines 6-15 (emphasis added).*

It is clear that the above portions of Leeke merely disclose (1) a customer profile; and (2) that the user selects a title or an icon associated with the title, wherein the title identifies a single track.

In contrast, claim 12 requires that the user select a personalized audio channel. Selecting a title is not the same as selecting a personalized audio channel. Selecting a personalized audio channel causes the system to transmit to the user sound recordings that match the profile associated with the channel. In contrast, selecting a title merely causes the system to transmit the single track that is associated with the title. Accordingly, for this additional reason, the combination of Leeke and Dwek does not teach or suggest all of the steps of claim 12.

Further, claim 12 also requires “displaying to a user a user interface that enables the user to select the first or second personalized audio channel, wherein the user interface displays both (1) a name associated with the first personalized audio channel and (2) a name associated with the second personalized audio channel...;” these features are not disclosed in Leeke or Dwek.

#### Dependent Claims 13-14

Claims 13-14 depend from claim 12. Thus, claims 13-14 are patentable over Leeke for at least the same reasons given above with respect to claim 12.



Dependent Claim 15

Like claim 11, claim 15 requires the step of "copying the sound recording from the cache to a non-volatile storage medium if it is determined that the user may obtain the copy." Accordingly claim 15 is patentable over Leeke for the reason give above with respect to claim 11.

Independent Claim 16

Like claim 1, claim 16 requires the step of "modifying at least one of the one or more profiles in response to the user indicating that the user likes or does not like the broadcast sound recording," Accordingly, for the reason give above with respect to claim 1, claim 16 is patentable over Leeke and Dwek.

Dependent Claim 17

Claim 17 depends from claim 16 and is thus patentable for the reasons stated above.

Independent Claim 18

Claim 18 is similar to claim 1. Thus, the above remarks for claim 1 apply to claim 18.

Dependent claims 19-26

Claims 19-26 depend from claim 18 and are patentable for at least the same reasons as claim 18.

Independent Claim 27

Claim 27 is similar to claim 12. Thus, the above remarks for claim 12 apply to claim 27.

Dependent Claim 28

Claim 28 depends from claim 27 and is patentable for at least the same reasons as claim 27.

Independent Claim 29

Claim 29 is similar to claim 16. Thus, the above remarks for claim 16 apply to claim 29.

Dependent Claim 30

Claim 30 depends from claim 29 and is patentable for at least the same reasons as claim 29.


Dependent Claims 32 and 34

Claims 32 and 34 depend from claim 1 and are patentable for at least the same reasons as claim 1.

**CONCLUSION**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections, and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

<b>RESPECTFULLY SUBMITTED,</b>					
<i>NAME AND REG. NUMBER</i>	Brian Rosenbloom, Registration No.: 41,276				
<i>SIGNATURE</i>				<i>DATE</i>	9/15/06
<i>Address</i>	Rothwell, Figg, Ernst & Manbeck Suite 800, 1425 K Street, N.W.				
<i>City</i>	Washington	<i>State</i>	D.C.	<i>Zip Code</i>	20005
<i>Country</i>	U.S.A.	<i>Telephone</i>	202-783-6040	<i>Fax</i>	202-783-6031